In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 666 of 2004

Date of Decision: 19.12.2007

Bhiwani Improvement Trust, Bhiwani.

…Petitioner

Versus

Shankar and Others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

Dr. Parveen Hans, Advocate
for the respondents.

RAJESH BINDAL, J.

The challenge in the present petition is to the order dated January 7, 2004 passed by learned Civil Judge (Senior Division), Bhiwani, in execution petition filed by the respondents/decree holders, wherein the petitioner was required to pay a sum of Rs. 2, 65,913/- to the respondents/decree holders on account of balance enhanced compensation, interest etc.

Briefly the facts as stated in the petition are that the State of Haryana, vide notifications dated July 18, 1972, July 25, 1972 and August 1, 1972, issued under Section 36 of the Punjab Town Improvement Trust Act, 1922 (for short "the Act") and vide notification dated May 8, 1974 issued under Section 42 of the Act acquired the land measuring 19.83 acres for development purposes for Improvement Trust Bhiwani under scheme No. 17. Award for the acquisition was announced on February 20, 1975 assessing the value of l and @ Rs. 9/- per square yard for small plots abutting in the main circle road and for other small plots @ Rs. 7/- per square yard.

For the remaining land compensation was assessed @ Rs. 4/- per square yard. The owners of the land, being dissatisfied with the award moved the Collector for reference. The Tribunal, on a reference, vide award dated January 15, 1991, assessed the compensation at Rs. 10/- per square yard with solatium at 30% and interest @ 9% for the first year and 15% for the subsequent years.

It is further claimed that as per the award of the Collector, a sum of Rs. 52,297/- was paid to the respondents as compensation on account of acquisition of land (Rs. 45,476/- plus solatium @ 15% i.e. Rs. 6,821/-). After the award of the Tribunal, the petitioner paid the balance amount of principal along with solatium @ 15% i.e. Rs. 78,446/- plus interest thereon from February 20, 1975 till February 28, 1991 @ 6% i.e. Rs. 75,411/-, thereby a total sum of Rs. 1,53,857/- was paid by the petitioner to the respondents on February 28, 1991.

The entire amount as directed in the award of the Tribunal i.e. solatium @ 30% and interest @ 15% was not paid by the petitioner as the award to that extent was contested by it by filing Special Leave Petition (Civil) No. 8943 of 1991 before Hon'ble the Supreme Court. It was only difference of interest and the solatium which was not paid and the rest of the amount was paid by the petitioner even before Special Leave Petition was listed before Hon'ble the Supreme Court. At the time of preliminary hearing, Hon'ble the Supreme Court after hearing learned counsel for the petitioner passed the following order on May 10, 1991:-

> "Issue notice on Special Leave Petition and on application for stay. It is stated by the learned counsel for the petitioner that the compensation money along with solatium at the rate of 15% and interest of 6% has already been paid. In that view, there will be an interim order with respect to the realisation of the additional amount".

However, finally vide order dated March 20, 1995, Hon'ble the Supreme Court relying upon earlier orders passed by it in the case of the petitioner, dismissed the Special Leave Petition while upholding the order passed by the Tribunal. The order dated March 20, 1995 passed by Hon'ble the Supreme Court is extracted below:-

> "It has been brought to our notice that in Civil Appeal Nos. arising out of SLP (C) No. 196/89 & 3087/89 titled Bhiwani

Improvement Trust, Bhiwani Vs. Mangat Ram (through LRs) & Ors. Subedar Major Kanwar Saini (through LRs.) & Ors. Decided on February 1, 1995, this Court did not interfere with the order passed by the Tribunal granting relief under section 23(2) of the Land Acquisition Act. Having regard to the said order, this special leave petition is dismissed".

After the dismissal of Special Leave Petition of the petitioner, the respondents filed execution petition before learned trial Court and on May 2, 2003, the petitioner paid an additional sum of Rs. 1,96,598/- on account of difference in the rate of interest and solatium. The calculation sheet as submitted by the petitioner before learned Executing Court for payment of additional amount is extracted below:

"**Calculation sheet of the amount due & paid to D.H.**

A)	Paid by Collector on 20-2-75	=	Rs. 45,476-00
	Solatium 15%	=	Rs. 6,821-00
		=	Rs. 52,297-00
	Total amount to be paid as per Tribunal Award	=	Rs. 1,13,690/-
	Solatium 15%		Rs. 17,053/-
			Rs. 1,30,743/-
	Less Paid		Rs. 52,297/-
	Balance		Rs. 78,446/-
B)	Paid after Tribunal award on 28.2.91 as under:		Rs. 1,53,857-00
	Out of principal amount balance due		Rs. 78,446/-
	Interest on Rs.78,446/- from 20.2.75 - date of taking over possession to 28.2.91 (when payment made) at the rate of 6% for 16 yrs. 8 days		Rs. 75,411/-
			Rs. 1,53,857/-

C)	Paid in Court on 2-5-2003	Rs. 1,96598-00
	Difference in interest of 15% and 6% on Rs. 1,30,743.50 from 20-2-75 to 28-2-91 16 Yrs. 8 days.	Rs. 1,08,410/-
	15% solatium	Rs. 17,053/-
	Interest on unpaid solatium of Rs. 17,053 @ 9% for Ist year then @ 15% from 20-2-75 to 5-5-03 28 yrs. 2 months.	Rs. 71,134/-
		Rs. 1,96,598/-

The submission of the petitioner is that with the above payment the entire claim of the respondents was satisfied in terms of the award in their favour by the Tribunal.

The respondents/decree holders, however, contested the payment made by the petitioner by raising the plea that they have not been paid the entire compensation along with interest. By submitting their own calculation sheet it was sought to be pleaded that the respondents have not been paid the amount in terms of the award in their favour and as on that date still a sum of Rs. 2,65,913/- was required to be paid to them. The calculation placed on record by the respondents before learned Executing Court is as under:-

"The total amount according to the Award is as under:-

1.	Cost of the land	=	Rs. 1,13,690/-
2.	Solatium @ 30%	=	Rs. 34,117/-
	Total :		Rs. 1,47,797/-
The amount given by the Collector		=	--Rs. 52,297/-
	Balance	=	Rs. 95,500/-
The interest @ 9% for the year 1975-76			Rs. 8,595/-
The interest @ 15% from the year 1976 to 1991		=	2,14,875/-
Total Amount:			Rs. 3,18,970/-

The payment made in the year 1991	=	Rs. 1,53,857/-
Balance Amount		Rs. 1,65,113/-
The interest @ 15% from the year 1991 to May 2003	=	Rs. 2,97,198/-
Total:		Rs. 4,62,311/-
The payment made on 2.5.2003	=	Rs. 1,96,598/-
Balance Amount	=	Rs. 2,65,913/-

Note:- The recovery of the interest @ 15% is due from May 2003 till date".

In the execution proceedings, the claim set up by the respondents/decree holders was contested by the petitioner by disputing the calculations made by them. It was submitted that the respondents/decree holders were demanding interest on the amount which had already been paid to them. The principal amount which was paid initially had been wrongly adjusted by the respondents/decree holders against interest, which is against law.

After considering the claim set up by the respective parties, learned Executing Court accepted the calculations made by the respondents/decree holders and thereby directed the petitioner to pay the balance sum of Rs. 2,65,913/-. It is this order against which the petitioner is aggrieved.

I have heard Sh. Rajinder Goyal, Advocate, learned counsel for the petitioner and Dr. Parveen Hans, Advocate, learned counsel for the respondents and with their able assistance have gone through the record.

Learned counsel for the petitioner submitted that the manner in which the respondents/decree holders have made the calculations of interest and apportioned the amount already paid by the petitioner in terms of the award of the Collector and the Tribunal in their favour, is not in conformity with law. The respondents of their own had set off the entire amount paid by the petitioner by detailed calculations under different heads on account of compensation, solatium and interest towards the payment of interest only and as a result according to the respondents the principal was still due and on that they have calculated interest which otherwise is not payable as the petitioner had paid the amount initially to the respondents in terms of the award of the Collector. Thereafter, strictly in terms of the award of the Tribunal except that the rate of interest paid to the respondents was 6% as against 15% and the

solatium was paid @ 15% as against 30% awarded by the Tribunal. The amount was calculated head-wise separately and paid to the respondents/decree holders immediately after the award was passed in their favour. This fact is further evident from the statement made by the petitioner before Hon'ble the Supreme Court at the time of preliminary hearing of the Special Leave Petition as is noticed from its order dated May 10, 1991. He has relied upon ***Prem Nath Kapur and Another v. National Fertilizers Corporation of India Ltd. and others (1996) 2 Supreme Court Cases 71, H.U.D.A. v. Devinder Kaur 2001(3) Punjab Law Reporter 867, Gurpreet Singh v. Union of India (2006) 8 Supreme Court Cases 457*** to submit that once the judgment debtor furnishes the details as to on what account the payments towards satisfaction of decree are being made, it is not open for the decree holder to adjust the amount as per his own sweet will against the payment of interest or costs etc. Accordingly, he prayed that the order passed by learned Executing Court directing the petitioner to pay the amount deserves to be set aside.

On the other hand, learned counsel for the respondents submitted that the petitioner having not furnished any details, it was open to the decree holders to have appropriated the amounts under any head to their benefit. He further submitted that as the petitioner has not even paid the amount awarded by the Collector at the initial stage, they have rightly been held entitled to payment of interest by learned Executing Court and the order passed by learned Executing Court deserves to be upheld.

After hearing learned counsel for the parties, I find substance in the contentions raised by learned counsel for the petitioner. The issue sought to be raised by him is not *res integra* as the same has already been considered by Hon'ble the Supreme Court in ***Prem Nath Kapur's case*** *(supra)* wherein accepting the proposition of law sought to be raised by the petitioner, it was opined as under:-

> “11. The basic question, therefore, would be whether the claimant is entitled to appropriate from the principal amount of compensation determined under Section 23(1) towards costs, and then towards interest payable under either Section 34 or Section28 or after Amendment Act came into force w.e.f. 24-9-1984, additional amount under Section 23(1-A). Even in general principles of law, Section 60 of the Contract Act provides that where the *debtor has omitted to intimate* and there are no other

circumstances indicating as to which debt the payment is to be applied, the creditor may apply it at his discretion, to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being, as to the limitation of suits. It would, therefore, be clear that the debtor may indeed exercise that right and may specify his appropriation expressly or his intention may be implied as shown by other circumstances, indicating that his intention at the time of payment was to appropriate the amount deposited by him to a specific debt or account towards the debt.

12. It is clear from the scheme of the Act and the express language used in Sections 23(1) and (2) , 34, and 28 and now Section 23(1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the Court. Equally, when the appellate Court under Section 54 further enhances the compensation, interest is payable on such excess amount determined under Section 23(1). In other words, the liability to pay interest arises as and when the compensation is further enhanced and liability to pay interest would be conterminous with the payment of the amount under Section 34 from the date of taking possession till date of payment or deposit or under Section 28 or Section 54 from the date of taking possession till the date of deposit of such excess amount into the Court. The liability to pay interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the Court or determined under Section 26 or Section 54 and deposited into the Court or on solatium under Section 23(2) and additional amount under Section 23(1-A).

13. Thus, we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested

person or deposited into Court under Section 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into Court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into Court. The liability to pay interest ceases on the date on which the deposit into Court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into Court in terms of Section 28, as the case may be.

14. Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation towards costs, interest, additional amount under Section 23(1-A)....." (emphasis supplied)

The view expressed by Hon'ble the Supreme Court in ***Prem Nath Kapur's case*** *(supra)* was followed by this Court in ***Devinder Kaur's case*** *(supra)*.

The judgment in ***Prem Nath Kapur's case*** *(supra)* came up for consideration before a Constitution Bench of Hon'ble the Supreme Court in ***Gurpreet Singh's case*** *(supra)* wherein concurring with the view expressed therein on this issue, Hon'ble the supreme Court opined as under:

"49. Though, a decree-holder may have the right to appropriate the payments made by the judgment-debtor, it could only be as provided in the decree if there is provision in that behalf in the decree or, as contemplated by Order 21 Rule 1 of the Code as explained by us above. The Code or the general rules do not contemplate payment of further interest by a judgment-debtor on the portion of the principal he has already paid. His obligation is only to pay interest on the balance principal remaining unpaid as adjudged either by the Court of first instance or in the Court of

appeal. On the pretext that the amount adjudged by the appellate Court is the real amount due, the decree-holder cannot claim interest on that part of the principal already paid to him. Of course as indicated, out of what is paid he can adjust the interest and costs first and the balance towards the principal, if there is a shortfall in deposit. But, beyond that, the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole amount and seek a re-appropriation as a whole in the light of the appellate decree.

50. It is true that the understanding of the expression"compensation awarded" for the purpose of Section 28 of the Act in *Prem Nath Kapur* was modified. To that extent one strand of reasoning in *Prem Nath Kapur* also stands discredited. But as we see it, on the question of appropriation, the decision in *Sunder* does not have such an impact as to compel us to jettison the reasoning adopted in *Prem Nath Kapur*. Slightly deviating from the reasoning in *Prem Nath Kapur* we have indicated earlier that even going by Order 21 Rule 1 of the Code, the position would be as envisaged in *Prem Nath Kapur*. That apart, we are inclined to respectfully agree with the reasoning in *Prem Nath Kapur* that on the wording of Section 34 and Section 28 of the Act read with and understood in the light of the stages of the award of compensation, the question of appropriation would be at different stages and a decree-holder would not be entitled to reopen the entire transaction to claim a re-appropriation of the amounts already received by him and appropriated at that particular stage. The reliance on the doctrine of merger does not enable the decree-holder to get over the scheme adopted by the Act.

51. *Prem Nath Kapur* also indicates that when an award-decree is passed specifying the amounts under different heads like the amount under Section 23(1), the amount under Section 23(2), the amount under Section 23(1-A) and the interest under Section 28 and the judgment-debtor makes a deposit of specified sums under these different heads, it will amount to the judgment-debtor intimating the decree-holder as to how the sum deposited is to be applied in discharge of the obligation of the judgment-debtor. Once a decree-holder receives the payment of the sums thus deposited,

he would be accepting the appropriation made by the judgment-debtor under the award-decree in the scheme of the Land Acquisition Act. This part of the reasoning in *Prem Nath Kapur* is, of course, also based on the reasoning that there is some inconsistency in Order 21 Rule 1 of the Code and the scheme of the Act. *Prem Nath Kapur* also indicates that when the decree itself specifies the amount payable under different heads (the decree has to do so under Section 26 of the Act) and amounts are deposited towards those different heads, the appropriation would be on the basis of the direction under the decree which must be taken to be one for crediting the various sums paid under particular heads. On the scheme of the Act, especially the wordings of Section 34 and Section 28 of the Act, it is not possible to say that the said approach made in *Prem Nath Kapur* is erroneous or is unreasonable or is not (sic) a line of approach that is not warranted. Therefore, when the judgment-debtor State makes a deposit along with the calculation appropriating distinct sums towards various heads of compensation as awarded by the Reference Court or by the appellate Court in the appellate decree, and the amount is received by the decree-holder, the decree-holder must be taken to be not entitled to seek an appropriation as if the judgment-debtor has not made any intimation and that he is entitled to appropriate at his volition. Considering the scheme of compensation under the Act in the context of the specific nature of the items specifically referred to in Section 23 of the Act, we are of the view that the approach adopted in *Prem Nath Kapur* is justified. A re-appropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree-holder and that would be in the realm of unjust enrichment.

52. What is to happen when a part of the amount awarded by the Reference Court or by the appellate Court is deposited pursuant to an interim order of the appellate Court or of the further appellate Court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree-holder on the strength of the interim order and the

> appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree-holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on the part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court has indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction.
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> 53. Thus, on the whole, we are satisfied that the essential ratio in *Prem Nath Kapur* on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee-decree-holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment-debtor while making the deposit intimating the decree-holder of his intention. We, thus, approve the ratio of *Prem Nath Kapur* on the aspect of appropriation". (emphasis supplied)

In the present case if the enunciation of law as culled out from the above referred judgments of Hon'ble the Supreme Court is applied in the facts and circumstances of the present case, the inescapable conclusion is that the respondents/decree holders will not be entitled to appropriate the amount already paid by the petitioner in partial satisfaction of the award of the Tribunal at their own sweet will only towards payment of interest and costs thereby keeping the principal amount due by not appropriating the same towards the compensation, solatium and interest as paid by the petitioners. Even otherwise the calculation sheet as produced by the respondents on record shows that the rates given in award by the Tribunal as enhanced compensation for acquisition of the land is sought to be calculated when the amount as awarded by the Collector was to be paid and on that account the

respondents were arriving at an imaginary figure on account of balance amount for non payment of compensation and thereafter started calculating interest etc. thereon. A perusal of the calculation sheet produced by the petitioner on record shows that the amount awarded by the Collector on account of compensation and solatium was paid in its entirety. Thereafter, the amount awarded by the Tribunal was calculated along with solatium @ 15% and a sum of Rs. 78,446/- was found to be due on that account after reducing the amount paid as per the award of the Collector. The interest on this amount was calculated @ 6% for a period of 16 years and 8 days i.e. amounting to Rs., 75,411/- making it a total of Rs. 1,53,857/- which was paid to the respondents on February 28, 1991 in terms of the award of the Tribunal dated January 15, 1991. After the rejection of the Special Leave Petition filed by the petitioner, the balance of solatium and the interest was paid to the tune of Rs. 1,96,598/-.

In view of my above discussions, the impugned order passed by the learned Executing Court is set aside as the direction for payment of amount contained therein is not in conformity with law laid down by Hon'ble the Supreme Court. However, it is made clear that if any amount is due to the respondents, if calculated as per the principles laid down by Hon'ble the Supreme Court, the respondents shall be at liberty to claim the same by filing a fresh application or getting the existing application revived.

The revision petition is disposed of accordingly.

(Rajesh Bindal)
Judge

December 19, 2007
"DK"

(Refer to reporter)